

NO. 83731-7

SUPREME COURT OF THE STATE OF WASHINGTON

In the Personal Restraint Petition of:

CHAD ALAN PIERCE,

Petitioner.

**SUPPLEMENTAL BRIEF OF THE DEPARTMENT OF
CORRECTIONS**

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I. INTRODUCTION

This is a Personal Restraint Petition (PRP) filed by a Washington State inmate challenging the Department's collection of costs of incarceration and legal financial obligations (LFOs) under RCWs 72.09.111, 72.09.480, and 72.11.020. The inmate argues that language in his judgment and sentence precludes application of these statutes. As shown below, the statutes in question explicitly require the Department to make deductions for costs of incarceration and LFOs and the inmate's judgment and sentence does not bar these deductions.

II. ISSUES PRESENTED

A. Whether the Department may collect cost of incarceration from an inmate under RCW 72.09.111 and RCW 72.09.480 when the inmate's judgment and sentence waives the cost of incarceration that could have been imposed under RCW 9.94A.760(2).

B. Whether the Department may collect LFOs from an inmate under RCW 72.09.111, RCW 72.09.480, and RCW 72.11.020 when the inmate's judgment and sentence does not toll LFOs, or contain a start date for the inmate to begin making LFO payments, but states that the inmate's LFOs must be paid on a schedule established by the inmate's Community Corrections Officer or Department of Judicial Administration Collections Officer.

III. STATEMENT OF THE CASE

Pierce is a Washington State inmate currently serving an indeterminate sentence under RCW 9.94A.712 with a minimum term of 108 months and a maximum term of life pursuant to convictions of two counts of First Degree Child Molestation in King County Superior Court Cause No. 05-1-06490-7KNT. *See* Exhibit 3 attached to Pierce's PRP. The judgment and sentence in this cause indicates that "Incarceration costs waived (RCW 9.94A.760(2))". Ex. 3, at 3, § 4.2(g). The judgment and sentence also ordered Pierce to pay a LFO of "\$500 + restitution . . . On a schedule established by the defendant's Community Corrections Officer or Department of Judicial Administration (DJA) Collections Officer." Ex. 3, § 4.3.

Prior to his current incarceration for his convictions of child molestation, Pierce was convicted of First Degree Attempted Robbery in King County Superior Court Cause No. 01-1-10417-5KNT and served a sentence of 30.75 months. *See* Exhibit 1 attached to Pierce's PRP. The judgment and sentence in this cause neither imposed nor waived incarceration costs under RCW 9.94A145(2).¹ Ex. 1, at 3, § 4.2(f). The judgment and sentence also ordered Pierce to pay a LFO of \$500.00

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¹ RCW 9.94A145(2) has been recodified as RCW 9.94A.760(2).

and restitution which were to be paid "on a schedule established by the defendant's Community Corrections Officer." Ex. 1, § 4.3.

The Department has collected approximately \$30.00 for costs of incarceration and an equal amount for LFOs from Pierce's prison account during his current incarceration. See Exhibit 4 attached to Pierce's PRP. Pierce filed a personal restraint petition (PRP) challenging deductions made from his prison account by the Department for the cost of incarceration and for the LFOs. The PRP asserts that the Department may not make any deductions under RCW 72.09 for costs of incarceration. He argued that the sentencing courts have essentially waived all costs of incarceration in his criminal judgments and sentences. Pierce also asserts that his judgments and sentences prohibit the Department from collecting LFOs until Pierce is released from the Department's custody. On this point, he argues that because the judgment and sentence includes a statement that a future community correction officer will address such matters, this impliedly bars deductions towards paying LFOs until he is on community custody. Pierce sought the return of all funds he asserts were taken unlawfully (approximately \$60), an order that the Department stop collecting cost of incarceration and LFOs from him, and reimbursement of his costs.

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The Department filed its response to the PRP on or about May 20, 2009. The Department argued in its response that collection of LFOs and cost of incarceration from Pierce while he is incarcerated is mandated by statute. That statutory requirement did not violate or otherwise conflict with Pierce's criminal judgments and sentences.

The Court of Appeals determined that Pierce's claims were frivolous and dismissed the PRP pursuant to RAP 16.11(b) on September 22, 2009. Pierce filed a motion for discretionary review which was granted by this Court by Order dated April 29, 2010.

IV. ARGUMENT

A. The Waiver Of Costs Of Incarceration That May Be Imposed Under RCW 9.94A.760(2) In A Criminal Judgment And Sentence Does Not Constitute A Waiver Of The Costs Of Incarceration That The Department Is Required To Collect From All Inmates Under RCW 72.09.111 And RCW 72.09.480

Pierce's argument confuses the statutory authority to impose costs of incarceration at the time of sentencing, RCW 9.94A.760(2), with the independent statutory requirement that the Department collect certain costs from inmates under RCW 72.09.111 and RCW 72.09.480. As shown below, these statutes are independent. The fact that a sentencing court does not apply RCW 9.94A.760(2) does not preclude application of RCW 72.09.111 and RCW 72.09.480. For the reasons that follow, this Court should deny the PRP with regard to costs of incarceration.

1. Sentencing And RCW 9.94A.760(2)

RCW 9.94A.760(2) authorizes a court to sentence a criminal defendant to pay for the costs of his or her incarceration if, at the time of sentencing, the offender “has the means to pay for the cost of incarceration.” See Appendix A, at 1, ¶ 2. For offenders sentenced to prison, the cost of incarceration under this statute can be “fifty dollars per day of incarceration.” *Id.* Cost of incarceration paid by offenders sentenced to prison “shall be remitted to the department.” *Id.*

Consistent with this statute, the judgment and sentence in Pierce’s 2005 criminal cause waives only the \$50.00 per day cost of incarceration that may be imposed on a criminal defendant pursuant to RCW 9.94A.760(2).² The judgment and sentence specifically waives cost of incarceration only under “RCW 9.94A.760(2).” Ex. 3. Nowhere does the judgment and sentence refer to cost of incarceration statutes in Title 72, RCW, such as RCW 72.09.111 and RCW 72.09.480.

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² The judgment and sentence in Pierce’s 2001 criminal cause neither imposed nor waived costs of incarceration under RCW 9.94A.145(2), since recodified as RCW 9.94A.760(2). The 2001 judgment and sentence, however, is not relevant to Pierce’s cost of incarceration claim because he has served his incarceration sentence under the 2001 cause and is currently serving only the incarceration sentence imposed in the 2005 cause.

2. The Mandate To Deduct Costs Of Incarceration Under RCW 72.09.111 And RCW 72.09.480

Several statutes require the Department to collect cost of incarceration from inmates, focusing on particular sources of income available to the inmate in custody. RCW 72.09.111 requires the Department to make various deductions from the wages and gratuities that inmates earn in prison, including deductions for costs of incarceration, crime victims compensation, and legal financial obligations. Appendix B, at 1 – 2. RCW 72.09.480 requires the Department to make similar deductions from funds inmates receive other than their wages and gratuities. Appendix C, at 1 – 2. Both of these statutes have consistently been upheld by state and federal courts to a broad array of legal challenges. *Wright v. Riveland*, 219 F.3d 905 (9th Cir. 2000); *Dean v. Lehman*, 143 Wn.2d 12, 18 P.3d 523 (2001); *Personal Restraint of Metcalf*, 92 Wn. App. 165, 963 P.2d 911 (1998).

In *Metcalf*, the Court of Appeals rejected a broad challenge to the constitutionality of the above deduction statutes, including claims that the statutes violated the ex post facto clause of the U.S. Constitution, due process, the double jeopardy clause, excessive fines, and Bill of Attainder. *Id.* 92 Wn. App. at 177. The court established that the deduction statutes in RCW 72.09 did not impose criminal punishment:

The picture which emerges from this examination of the *Mendoza-Martinez* factors does not demonstrate that the fund deductions are criminal penalties. The deductions operate essentially like a tax on prisoners, not as a punishment for their criminal conduct. Our conclusion that the deductions are remedial therefore stands. And from this conclusion, it follows all Metcalf's federal (and analogous state) constitutional claims fail.

Id., 92 Wn. App. at 183.

In *Dean, supra*, the Supreme Court upheld RCW 72.09.480, finding that this statute is essentially a recoupment provision: "The overall scheme of the deductions authorized by RCW 72.09.480 is to seek recompense for the costs associated with incarcerating an inmate". *Id.*, 143 Wn.2d at 33.

These cases addressing RCW 72.09.111 and RCW 72.09.480 demonstrate that the deductions are not criminal sanctions, but are independent statutory requirements. These deductions do not amend Pierce's criminal judgments and sentences, and do not impose criminal punishment. Because RCWs 72.09.111 and 72.09.480 do not impose criminal penalties, they cannot and do not contravene Pierce's 2005 criminal judgment and sentence. *Dean, supra; Metcalf, supra.*

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3. The Deductions Mandated By RCW 72.09.111 And RCW 72.09.480 Apply Regardless Of Whether A Judgment And Sentence Imposes Or Waives Costs Under RCW 9.94A.760(2)

RCW 72.09.111 and .480 address deductions from wages, gratuities, and funds obtained while in prison. These statutes address a different subject matter than addressed at the time of sentencing under RCW 9.94A.760(2). The sentencing statute is narrowly concerned with financial circumstances at the time of sentencing. For this reason, a sentencing court's waiver of costs of incarceration under RCW 9.94A.760(2) does not constitute a waiver of the costs of incarceration that inmates must pay under RCW 72.09.111 and RCW 72.09.480.

First, the statutory language of the two chapters does not support Pierce's interpretation that the sentencing court in the criminal case is waiving the Department's authority to comply with statutory deductions required by RCW 72.09.111 and RCW 72.09.480. These two statutes apply to specific funds, such as wages or gratuities earned in prison or other funds received in prison. In contrast, RCW 9.94A.760(2) addresses whether a defendant *at the time of sentencing* should be charged in advance with costs of incarceration because of the defendant's ability to pay from existing assets. RCW 9.94A.760(2) does not address funds

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acquired in prison and waiver of this sentencing option does not preclude application of the deductions in RCW 72.09.

Second, Pierce's argument would result in virtually no inmates paying costs of incarceration under RCW 72.09.111 and RCW 72.09.480, which is an absurd result because it nullifies the unambiguous intent of the legislature to require those deductions from funds acquired in prison. It is likely that trial courts rarely, if ever, impose costs of incarceration on criminal defendants under former RCW 9.94A.145(2) or RCW 9.94A.760(2) because it is rare that a defendant will be sentenced while having the assets necessary to trigger this sentencing requirement.³

B. This Court Should Deny Relief To Pierce With Regard To His Claim That The Department Is Not Authorized To Collect The Deductions Mandated By RCW 72.09.111, RCW 72.09.480, And RCW 72.11.020 As The Department Is Required By Law To Collect LFOs From All Inmates

Pierce also argues that his criminal judgments and sentences prohibit the Department from collecting legal and financial obligations ("LFOs") from him until he is released from prison. He reasons that since the judgments and sentences provide that Pierce shall pay his LFOs on a schedule established by Pierce's community corrections officer, he is not required to pay his LFOs while in prison. See Pierce's Exhibits 1 and 3.

³ The Department could not identify a single instance in which a sentencing court has ordered a criminal defendant to pay the costs of his or her incarceration under RCW 9.94A.145(2) or RCW 9.94A.760(2).

The Court should reject this argument because unambiguous statutory language and case law supports the Department's collection of LFOs from him under RCW 72.09.111, RCW 72.09.480, and RCW 72.11.020.

**1. RCW 72.09.111, RCW 72.09.480, and RCW 72.11.020
Require Deductions From Inmate Funds To Pay LFOs**

The Department is required by numerous statutes to make LFO deductions from funds inmates receive. RCW 72.09.111 requires the Department to make LFO deductions from inmates' wages and gratuities and RCW 72.09.480 requires the Department to make LFO deductions from funds inmates receive from outside sources. RCW 72.11.020 gives the Department broad authority to take funds from inmate's accounts to pay their LFOs:

... the secretary shall have authority to disburse money from such person's personal account for the purpose of satisfying a court-ordered legal financial obligation to the court.

See Appendix D, at 1.

The only constraint placed on the Department's authority to make disbursements for LFOs under RCW 72.11.020 is that the disbursements may not reduce "the inmate's account to an amount less than the defined level of indigency to be determined by the department." *Id.* RCW 72.11.020 authorizes the Department to disburse inmates' funds to pay unpaid or unsatisfied LFOs whenever the account exceeds the indigency

standard and the inmate has LFO obligations that have not yet been fully satisfied.

The legislature amended RCW 72.11.020 in 2002 to require that LFO deductions be made without exception: "Legal Financial Obligation deductions *shall* be made as stated in RCW 72.09.111(1) and 72.65.05 without exception." (Emphasis added.) This amendment makes clear that the Department must make LFO deductions from the funds of all inmates who have LFO obligations regardless of language to the contrary in their judgments and sentences. When RCW 72.11.020 is read in conjunction with RCWs 72.09.111 and 72.09.480, it unambiguously requires the Department to make LFO disbursements from inmates' accounts whenever inmates acquire funds and have unsatisfied LFOs. *State v. Chapman*, 140 Wn.2d 436, 478, 998 P.2d 282 (2000) (Statutes relating to the same subject must be read as complementary, instead of in conflict with each other). RCW 72.11.020 supports the Department's position that the term "owing" in RCWs 72.09.111 and 72.09.480 has its usual meaning which is "unpaid" or "unsatisfied". Because it is undisputed that Pierce had unpaid, unsatisfied LFOs at the time the Department disbursed funds from his account to pay such LFOs, any objection concerning deductions to pay LFOs is meritless.

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2. Pierce Relies On An Untenable Interpretation Of The Judgment And Sentence That Would Toll Liability For His LFOs

Pierce's argument about LFOs is also based on an illogical reading of his judgments and sentences. The statements he cites notify Pierce and allow the Department to set a payment schedule for remaining LFOs once Pierce is released from custody and is being supervised by a Department Community Corrections Officer. Provisions such as this are common in criminal judgments and sentences and are employed by trial courts which are not in a position to know what the defendant's financial situation will be when the defendant is released from custody years or perhaps even decades later. Therefore, the sentencing court intended nothing more than that Pierce's Community Corrections Officer would set a LFO payment schedule for Pierce upon his release. The statement, at most, recognizes that the court cannot attempt to set such schedule at the time of Pierce's sentencing.

Pierce, however, reads the judgment and sentence to make his LFO obligations unenforceable for many years and to bar the Department from applying the deductions for LFOs in RCW 72.09 and the authority to pay LFOs in RCW 72.11.020. Pierce's judgment and sentence, however, contains no language setting a start date on Pierce's LFO obligations; the sentence does not imply that the LFOs are not due and owing.

Moreover, the trial court has no authority to delay the enforceability of LFO obligations, confirming that the trial court had no intent to bar deductions to pay LFOs. *See* RCW 9.94A.760 (Parties or entities owed LFOs may collect on judgment any time after judgment and sentence is entered); RCW 10.82.090 (LFOs bear interest from date of judgment). “The ‘trial court’s sentencing authority is limited to that expressly found in the statutes.’” *State v. Furman*, 122 Wn.2d 440, 456, 858 P.2d 1092 (1993) (quoting *State v. Theroff*, 33 Wn. App. 741, 744, 657 P.2d 800, *review denied*, 99 Wn.2d 1015 (1983)).⁴ There is no indication that the trial court attempted to exercise unusual power over Pierce’s LFOs.

There is no indication that the sentencing court believed it was waiving or restricting the Department’s authority under RCW 72.11.020 or any other statute to disburse funds from Pierce’s account to pay his unpaid LFOs. Because nothing in Pierce’s judgments and sentences delay the enforceability of Pierce’s LFO obligations, the Department properly collected and may continue to collect LFOs from Pierce’s funds.

⁴ *See also State v. Johnson*, 104 Wn. App. 489, 17 P.3d 3 (2001) (court lacked authority to order defendant convicted of a non-sex offense to register as a sex offender); *State v. Skillman*, 60 Wn. App. 837, 838-39, 809 P.2d 756 (1991) (court lacked authority to order community placement); *Id.* at 839 (“In Washington, the authority to sentence in felony cases is prescribed by the Sentencing Reform Act (SRA), RCW 9.94A.”) Nothing in the SRA authorizes a sentencing court to delay the enforceability of LFOs and instead recognizes that LFOs are immediately enforceable by any and all lawful means.

3. RCW 9.94A.772 Confirms That A Judgment And Sentence Should Not Be Read To Delay Deductions For Paying LFOs

RCW 9.94A.772 addresses LFOs and demonstrates that even if a court or the department sets monthly payment or start dates, it “shall not be construed as a limitation of the due date or amount of legal financial obligations . . .” RCW 9.94A.772 states in full:

Notwithstanding any other provision of state law, monthly payment or starting dates set by the court, the county clerk, or the department before or after October 1, 2003, shall not be construed as a limitation of the due date or amount of legal financial obligations, which may be immediately collected by civil means and shall not be construed as a limitation for purposes of credit reporting. Monthly payments and commencement dates are to be construed to be applicable solely as a limitation upon the deprivation of an offender’s liberty for nonpayment.

RCW 9.94A.772 applies to the Department, the courts, and any other entity that may be called upon to interpret or construe LFO monthly payment and starting dates set by a court or by the Department. This statute precludes treating the judgment and sentence as tolling liability for the LFOs and prohibiting application of the mandatory provisions in RCW 72.09, above.

4. The Court Should Follow The Court of Appeals Ruling In PRP of *Martin*

Finally, the Court of Appeals’ decision in *In re Personal Restraint of Martin*, 129 Wn. App. 135, 118 P.3d 387 (2005) explains why this

Court should reject Pierce's claim concerning the Department's collection of LFOs. In *Martin*, the petitioner, a Washington inmate, asserted that the Department's collection of LFOs while he was still incarcerated was unlawful because his judgment and sentence ordered him to pay LFOs "on a schedule established by the defendants' Community Corrections Officer". *Id.*, 129 Wn. App. at 137. The Court of Appeals denied *Martin's* PRP, holding that the Department has the authority to collect LFOs in spite of language to the contrary in an inmate's judgment and sentence:

The statute is not ambiguous. Its clear language provides that monthly payment or starting dates contained in a court order "shall not be construed as a limitation on the due date" for purposes of collecting legal financial obligations by civil means. Although perhaps not enacted directly in response to *Angulo*, RCW 9.94A.772 changes the Sentencing Reform Act to specifically allow for collection of legal financial obligations during incarceration despite language in a defendant's judgment and sentence that would direct otherwise.

Martin, 129 Wn. App. at 140.

Pierce's claim concerning collection of LFOs by the Department is identical to the claim in *Martin*. This Court should follow the decision in *Martin*.

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5. Pierce's Argument Leads To Absurd Results

Pierce's arguments on his LFO collection claim would also produce absurd results. Pierce is serving an indeterminate life sentence pursuant to RCW 9.94A.712, now recodified as RCW 9.94A.507, and he may or may not be released from incarceration. Adoption of Pierce's position would mean that he and similarly sentenced serious sex offenders would never have to pay their LFOs, including court ordered restitution to their victims, if they are not released from prison. This Court should not construe Pierce's judgment and sentence or the statutes concerning LFOs in such a manner that allows Pierce and similarly situated convicted felons to avoid or postpone their financial obligations to the state and their victims.

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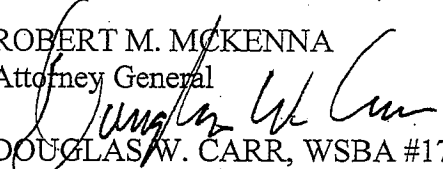
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V. CONCLUSION

Pierce's PRP was properly dismissed by the Court of Appeals as meritless. For the foregoing reasons, the Department requests that this Court affirm the dismissal of Pierce's PRP.

RESPECTFULLY SUBMITTED this 28th day of July, 2010.

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CERTIFICATE OF SERVICE

I certify that on the date below I served a copy of
SUPPLEMENTAL BRIEF OF THE DEPARTMENT OF
CORRECTIONS on all parties or their counsel of record as follows:

- ☒ US Mail Postage Prepaid
- ☐ United Parcel Service, Next Day Air
- ☐ ABC/Legal Messenger
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TO:

CHAD ALAN PIERCE #714567
AIRWAY HEIGHTS CORRECTIONS CENTER
PO BOX 2049 K/KB22L
AIRWAY HEIGHTS WA 99001-2049

I certify under penalty of perjury that the foregoing is true and
correct.

EXECUTED this 28th day of July, 2010 at Olympia,
Washington.


CHERRIE KOLLMER

APPENDIX A

RCW 9.94A.760

Legal financial obligations.

(1) Whenever a person is convicted in superior court, the court may order the payment of a legal financial obligation as part of the sentence. The court must on either the judgment and sentence or on a subsequent order to pay, designate the total amount of a legal financial obligation and segregate this amount among the separate assessments made for restitution, costs, fines, and other assessments required by law. On the same order, the court is also to set a sum that the offender is required to pay on a monthly basis towards satisfying the legal financial obligation. If the court fails to set the offender monthly payment amount, the department shall set the amount if the department has active supervision of the offender, otherwise the county clerk shall set the amount. Upon receipt of an offender's monthly payment, restitution shall be paid prior to any payments of other monetary obligations. After restitution is satisfied, the county clerk shall distribute the payment proportionally among all other fines, costs, and assessments imposed, unless otherwise ordered by the court.

(2) If the court determines that the offender, at the time of sentencing, has the means to pay for the cost of incarceration, the court may require the offender to pay for the cost of incarceration at a rate of fifty dollars per day of incarceration, if incarcerated in a prison, or the court may require the offender to pay the actual cost of incarceration per day of incarceration, if incarcerated in a county jail. In no case may the court require the offender to pay more than one hundred dollars per day for the cost of incarceration. Payment of other court-ordered financial obligations, including all legal financial obligations and costs of supervision shall take precedence over the payment of the cost of incarceration ordered by the court. All funds recovered from offenders for the cost of incarceration in the county jail shall be remitted to the county and the costs of incarceration in a prison shall be remitted to the department.

(3) The court may add to the judgment and sentence or subsequent order to pay a statement that a notice of payroll deduction is to be issued immediately. If the court chooses not to order the immediate issuance of a notice of payroll deduction at sentencing, the court shall add to the judgment and sentence or subsequent order to pay a statement that a notice of payroll deduction may be issued or other income-withholding action may be taken, without further notice to the offender if a monthly court-ordered legal financial obligation payment is not paid when due, and an amount equal to or greater than the amount payable for one month is owed.

If a judgment and sentence or subsequent order to pay does not include the statement that a notice of payroll deduction may be issued or other income-withholding action may be taken if a monthly legal financial obligation payment is past due, the department or the county clerk may serve a notice on the offender stating such requirements and authorizations. Service shall be by personal service or any form of mail requiring a return receipt.

(4) Independent of the department or the county clerk, the party or entity to whom the legal financial obligation is owed shall have the authority to use any other remedies available to the party or entity to collect the legal financial obligation. These remedies include enforcement in the same manner as a judgment in a civil action by the party or entity to whom the legal financial obligation is owed. Restitution collected through civil enforcement must be paid

through the registry of the court and must be distributed proportionately according to each victim's loss when there is more than one victim. The judgment and sentence shall identify the party or entity to whom restitution is owed so that the state, party, or entity may enforce the judgment. If restitution is ordered pursuant to RCW 9.94A.750(6) or 9.94A.753(6) to a victim of rape of a child or a victim's child born from the rape, the Washington state child support registry shall be identified as the party to whom payments must be made. Restitution obligations arising from the rape of a child in the first, second, or third degree that result in the pregnancy of the victim may be enforced for the time periods provided under RCW 9.94A.750(6) and 9.94A.753(6). All other legal financial obligations for an offense committed prior to July 1, 2000, may be enforced at any time during the ten-year period following the offender's release from total confinement or within ten years of entry of the judgment and sentence, whichever period ends later. Prior to the expiration of the initial ten-year period, the superior court may extend the criminal judgment an additional ten years for payment of legal financial obligations including crime victims' assessments. All other legal financial obligations for an offense committed on or after July 1, 2000, may be enforced at any time the offender remains under the court's jurisdiction. For an offense committed on or after July 1, 2000, the court shall retain jurisdiction over the offender, for purposes of the offender's compliance with payment of the legal financial obligations, until the obligation is completely satisfied, regardless of the statutory maximum for the crime. The department may only supervise the offender's compliance with payment of the legal financial obligations during any period in which the department is authorized to supervise the offender in the community under RCW 9.94A.728, 9.94A.501, or in which the offender is confined in a state correctional institution or a correctional facility pursuant to a transfer agreement with the department, and the department shall supervise the offender's compliance during any such period. The department is not responsible for supervision of the offender during any subsequent period of time the offender remains under the court's jurisdiction. The county clerk is authorized to collect unpaid legal financial obligations at any time the offender remains under the jurisdiction of the court for purposes of his or her legal financial obligations.\

(5) In order to assist the court in setting a monthly sum that the offender must pay during the period of supervision, the offender is required to report to the department for purposes of preparing a recommendation to the court. When reporting, the offender is required, under oath, to respond truthfully and honestly to all questions concerning present, past, and future earning capabilities and the location and nature of all property or financial assets. The offender is further required to bring all documents requested by the department.

(6) After completing the investigation, the department shall make a report to the court on the amount of the monthly payment that the offender should be required to make towards a satisfied legal financial obligation.

(7)(a) During the period of supervision, the department may make a recommendation to the court that the offender's monthly payment schedule be modified so as to reflect a change in financial circumstances. If the department sets the monthly payment amount, the department may modify the monthly payment amount without the matter being returned to the court. During the period of supervision, the department may require the offender to report to the department for the purposes of reviewing the appropriateness of the collection schedule for the legal financial

obligation. During this reporting, the offender is required under oath to respond truthfully and honestly to all questions concerning earning capabilities and the location and nature of all property or financial assets. The offender shall bring all documents requested by the department in order to prepare the collection schedule.

(b) Subsequent to any period of supervision, or if the department is not authorized to supervise the offender in the community, the county clerk may make a recommendation to the court that the offender's monthly payment schedule be modified so as to reflect a change in financial circumstances. If the county clerk sets the monthly payment amount, or if the department set the monthly payment amount and the department has subsequently turned the collection of the legal financial obligation over to the county clerk, the clerk may modify the monthly payment amount without the matter being returned to the court. During the period of repayment, the county clerk may require the offender to report to the clerk for the purpose of reviewing the appropriateness of the collection schedule for the legal financial obligation. During this reporting, the offender is required under oath to respond truthfully and honestly to all questions concerning earning capabilities and the location and nature of all property or financial assets. The offender shall bring all documents requested by the county clerk in order to prepare the collection schedule.

(8) After the judgment and sentence or payment order is entered, the department is authorized, for any period of supervision, to collect the legal financial obligation from the offender. Subsequent to any period of supervision or, if the department is not authorized to supervise the offender in the community, the county clerk is authorized to collect unpaid legal financial obligations from the offender. Any amount collected by the department shall be remitted daily to the county clerk for the purpose of disbursements. The department and the county clerks are authorized, but not required, to accept credit cards as payment for a legal financial obligation, and any costs incurred related to accepting credit card payments shall be the responsibility of the offender.

(9) The department or any obligee of the legal financial obligation may seek a mandatory wage assignment for the purposes of obtaining satisfaction for the legal financial obligation pursuant to RCW 9.94A.7701. Any party obtaining a wage assignment shall notify the county clerk. The county clerks shall notify the department, or the administrative office of the courts, whichever is providing the monthly billing for the offender.

(10) The requirement that the offender pay a monthly sum towards a legal financial obligation constitutes a condition or requirement of a sentence and the offender is subject to the penalties for noncompliance as provided in RCW 9.94B.040, 9.94A.737, or 9.94A.740.

(11)(a) Until January 1, 2004, the department shall mail individualized monthly billings to the address known by the department for each offender with an unsatisfied legal financial obligation.

(b) Beginning January 1, 2004, the administrative office of the courts shall mail individualized monthly billings to the address known by the office for each offender with an unsatisfied legal financial obligation.

(c) The billing shall direct payments, other than outstanding cost of supervision assessments under RCW 9.94A.780, parole assessments under RCW 72.04A.120, and cost of probation assessments under RCW 9.95.214, to the county clerk, and cost of supervision, parole, or probation assessments to the department.

(d) The county clerk shall provide the administrative office of the courts with notice of payments by such offenders no less frequently than weekly.

(e) The county clerks, the administrative office of the courts, and the department shall maintain agreements to implement this subsection.

(12) The department shall arrange for the collection of unpaid legal financial obligations during any period of supervision in the community through the county clerk. The department shall either collect unpaid legal financial obligations or arrange for collections through another entity if the clerk does not assume responsibility or is unable to continue to assume responsibility for collection pursuant to subsection (4) of this section. The costs for collection services shall be paid by the offender.

(13) The county clerk may access the records of the employment security department for the purposes of verifying employment or income, seeking any assignment of wages, or performing other duties necessary to the collection of an offender's legal financial obligations.

(14) Nothing in this chapter makes the department, the state, the counties, or any state or county employees, agents, or other persons acting on their behalf liable under any circumstances for the payment of these legal financial obligations or for the acts of any offender who is no longer, or was not, subject to supervision by the department for a term of community custody, and who remains under the jurisdiction of the court for payment of legal financial obligations.

[2008 c 231 § 35; 2005 c 263 § 1; 2004 c 121 § 3; 2003 c 379 § 14; 2001 c 10 § 3. Prior: 2000 c 226 § 4; 2000 c 28 § 31; 1999 c 196 § 6; prior: 1997 c 121 § 5; 1997 c 52 § 3; 1995 c 231 § 3; 1991 c 93 § 2; 1989 c 252 § 3. Formerly RCW 9.94A.145.]

Notes:

Intent -- Application -- Application of repealers -- Effective date -- 2008 c 231: See notes following RCW 9.94A.701.

Severability -- 2008 c 231: See note following RCW 9.94A.500.

Intent -- Purpose--2003 c 379 §§ 13-27: "The legislature intends to revise and improve the processes for billing and collecting legal financial obligations. The purpose of sections 13 through 27, chapter 379, Laws of 2003 is to respond to suggestions and requests made by county government officials, and in particular county clerks, to assume the collection of such obligations in cooperation and coordination with the department of corrections and the administrative office for [of] the courts. The legislature undertakes this effort following a collaboration between local officials, the department of corrections, and the administrative office for [of] the courts. The intent of sections 13 through 27, chapter 379, Laws of 2003 is to promote an increased and more

efficient collection of legal financial obligations and, as a result, improve the likelihood that the affected agencies will increase the collections which will provide additional benefits to all parties and, in particular, crime victims whose restitution is dependent upon the collections." [2003 c 379 § 13.]

Severability -- Effective dates -- 2003 c 379: See notes following RCW 9.94A.728.

Intent -- Effective date -- 2001 c 10: See notes following RCW 9.94A.505.

Finding -- Intent -- Severability -- 2000 c 226: See notes following RCW 9.94A.505.

Technical correction bill -- 2000 c 28: See note following RCW 9.94A.015.

Construction -- Short title -- 1999 c 196: See RCW 72.09.904 and 72.09.905.

Severability -- 1999 c 196: See note following RCW 9.94A.010.

Retroactive application -- Captions not law -- 1991 c 93: See notes following RCW 9.94A.7601.

Purpose -- Prospective application -- Effective dates -- Severability -- 1989 c 252: See notes following RCW 9.94A.030.

APPENDIX B

RCW 72.09.111

Inmate wages — Deductions — Availability of savings — Employment goals — Recovery of cost of incarceration.

*** CHANGE IN 2010 *** (SEE 6337-S.SL) ***

*** CHANGE IN 2010 *** (SEE 6504-S2.SL) ***

(1) The secretary shall deduct taxes and legal financial obligations from the gross wages, gratuities, or workers' compensation benefits payable directly to the inmate under chapter 51.32 RCW, of each inmate working in correctional industries work programs, or otherwise receiving such wages, gratuities, or benefits. The secretary shall also deduct child support payments from the gratuities of each inmate working in class II through class IV correctional industries work programs. The secretary shall develop a formula for the distribution of offender wages, gratuities, and benefits. The formula shall not reduce the inmate account below the indigency level, as defined in RCW 72.09.015.

(a) The formula shall include the following minimum deductions from class I gross wages and from all others earning at least minimum wage:

- (i) Five percent to the state general fund;
- (ii) Ten percent to a department personal inmate savings account;
- (iii) Twenty percent to the department to contribute to the cost of incarceration; and
- (iv) Twenty percent for payment of legal financial obligations for all inmates who have legal financial obligations owing in any Washington state superior court.

(b) The formula shall include the following minimum deductions from class II gross gratuities:

- (i) Five percent to the state general fund;
- (ii) Ten percent to a department personal inmate savings account;
- (iii) Fifteen percent to the department to contribute to the cost of incarceration;
- (iv) Twenty percent for payment of legal financial obligations for all inmates who have legal financial obligations owing in any Washington state superior court; and
- (v) Fifteen percent for any child support owed under a support order.

(c) The formula shall include the following minimum deductions from any workers' compensation benefits paid pursuant to RCW 51.32.080:

- (i) Five percent to the state general fund;
- (ii) Ten percent to a department personal inmate savings account;
- (iii) Twenty percent to the department to contribute to the cost of incarceration; and
- (iv) An amount equal to any legal financial obligations owed by the inmate established by an order of any Washington state superior court up to the total amount of the award.

(d) The formula shall include the following minimum deductions from class III gratuities:

- (i) Five percent for the state general fund; and
- (ii) Fifteen percent for any child support owed under a support order.

(e) The formula shall include the following minimum deduction from class IV gross gratuities:

- (i) Five percent to the department to contribute to the cost of incarceration; and
- (ii) Fifteen percent for any child support owed under a support order.

(2) Any person sentenced to life imprisonment without possibility of release or parole under chapter 10.95 RCW or sentenced to death shall be exempt from the requirement under subsection (1)(a)(ii), (b)(ii), or (c)(ii).

(3)(a) The department personal inmate savings account, together with any accrued interest, shall only be available to an inmate at the following times:

- (i) The time of his or her release from confinement;
- (ii) Prior to his or her release from confinement in order to secure approved housing; or
- (iii) When the secretary determines that an emergency exists for the inmate.

(b) If funds are made available pursuant to (a)(ii) or (iii) of this subsection, the funds shall be made available to the inmate in an amount determined by the secretary.

(c) The management of classes I, II, and IV correctional industries may establish an incentive payment for offender workers based on productivity criteria. This incentive shall be paid separately from the hourly wage/gratuity rate and shall not be subject to the specified deduction for cost of incarceration.

(4)(a) Subject to availability of funds for the correctional industries program, the expansion of inmate employment in class I and class II correctional industries shall be implemented according to the following schedule:

(i) Not later than June 30, 2005, the secretary shall achieve a net increase of at least two hundred in the number of inmates employed in class I or class II correctional industries work programs above the number so employed on June 30, 2003;

(ii) Not later than June 30, 2006, the secretary shall achieve a net increase of at least four hundred in the number of inmates employed in class I or class II correctional industries work programs above the number so employed on June 30, 2003;

(iii) Not later than June 30, 2007, the secretary shall achieve a net increase of at least six hundred in the number of inmates employed in class I or class II correctional industries work programs above the number so employed on June 30, 2003;

(iv) Not later than June 30, 2008, the secretary shall achieve a net increase of at least nine hundred in the number of inmates employed in class I or class II correctional industries work programs above the number so employed on June 30, 2003;

(v) Not later than June 30, 2009, the secretary shall achieve a net increase of at least one thousand two hundred in the number of inmates employed in class I or class II correctional industries work programs above the number so employed on June 30, 2003;

(vi) Not later than June 30, 2010, the secretary shall achieve a net increase of at least one thousand five hundred in the number of inmates employed in class I or class II correctional industries work programs above the number so employed on June 30, 2003.

(b) Failure to comply with the schedule in this subsection does not create a private right of action.

(5) In the event that the offender worker's wages, gratuity, or workers' compensation benefit is subject to garnishment for support enforcement, the state general fund, savings, and cost of incarceration deductions shall be calculated on the net wages after taxes, legal financial obligations, and garnishment.

(6) The department shall explore other methods of recovering a portion of the cost of the inmate's incarceration and for encouraging participation in work programs, including development of incentive programs that offer inmates benefits and amenities paid for only from wages earned while working in a correctional industries work program.

(7) The department shall develop the necessary administrative structure to recover inmates' wages and keep records of the amount inmates pay for the costs of incarceration and amenities. All funds deducted from inmate wages under subsection (1) of this section for the purpose of contributions to the cost of incarceration shall be deposited in a dedicated fund with the department and shall be used only for the purpose of enhancing and maintaining correctional industries work programs.

(8) It shall be in the discretion of the secretary to apportion the inmates between class I and class II depending on available contracts and resources.

(9) Nothing in this section shall limit the authority of the department of social and health services division of child support from taking collection action against an inmate's moneys, assets, or property pursuant to chapter 26.23, 74.20, or 74.20A RCW.

[2009 c 479 § 60; 2007 c 483 § 605; 2004 c 167 § 7. Prior: 2003 c 379 § 25; 2003 c 271 § 2; 2002 c 126 § 2; 1999 c 325 § 2; 1994 sp.s. c 7 § 534; 1993 sp.s. c 20 § 2.]

Notes:

Effective date -- 2009 c 479: See note following RCW 2.56.030.

Finding -- Intent -- 2007 c 483: See note following RCW 35.82.340.

Findings -- Part headings not law -- Severability -- 2007 c 483: See RCW 72.78.005, 72.78.900, and 72.78.901.

Severability -- Effective dates -- 2003 c 379: See notes following RCW 9.94A.728.

Intent -- Purpose -- 2003 c 379 §§ 13-27: See note following RCW 9.94A.760.

Effective date -- 1994 sp.s. c 7 § 534: "Section 534 of this act shall take effect June 30, 1994." [1994 sp.s. c 7 § 536.]

Finding -- Intent -- Severability -- 1994 sp.s. c 7: See notes following RCW 43.70.540.

Effective date -- 1993 sp.s. c 20 § 2: "Section 2 of this act shall take effect June 30, 1994." [1993 sp.s. c 20 § 10.]

Severability -- 1993 sp.s. c 20: See note following RCW 43.19.534.

APPENDIX C

RCW 72.09.480

Inmate funds subject to deductions — Definitions — Exceptions — Child support collection actions.

***** CHANGE IN 2010 *** (SEE 6504-S2.SL) *****

(1) Unless the context clearly requires otherwise, the definitions in this section apply to this section.

(a) "Cost of incarceration" means the cost of providing an inmate with shelter, food, clothing, transportation, supervision, and other services and supplies as may be necessary for the maintenance and support of the inmate while in the custody of the department, based on the average per inmate costs established by the department and the office of financial management.

(b) "Minimum term of confinement" means the minimum amount of time an inmate will be confined in the custody of the department, considering the sentence imposed and adjusted for the total potential earned early release time available to the inmate.

(c) "Program" means any series of courses or classes necessary to achieve a proficiency standard, certificate, or postsecondary degree.

(2) When an inmate, except as provided in subsections (4) and (8) of this section, receives any funds in addition to his or her wages or gratuities, except settlements or awards resulting from legal action, the additional funds shall be subject to the following deductions and the priorities established in chapter 72.11 RCW:

(a) Five percent to the state general fund;

(b) Ten percent to a department personal inmate savings account;

(c) Twenty percent for payment of legal financial obligations for all inmates who have legal financial obligations owing in any Washington state superior court;

(d) Twenty percent for any child support owed under a support order; and

(e) Twenty percent to the department to contribute to the cost of incarceration.

(3) When an inmate, except as provided in subsection (8) of this section, receives any funds from a settlement or award resulting from a legal action, the additional funds shall be subject to the deductions in RCW 72.09.111(1)(a) and the priorities established in chapter 72.11 RCW.

(4) When an inmate who is subject to a child support order receives funds from an inheritance, the deduction required under subsection (2)(e) of this section shall only apply after the child support obligation has been paid in full.

(5) The amount deducted from an inmate's funds under subsection (2) of this section shall not exceed the department's total cost of incarceration for the inmate incurred during the inmate's minimum or actual term of confinement, whichever is longer.

(6)(a) The deductions required under subsection (2) of this section shall not apply to funds received by the department from an offender or from a third party on behalf of an offender for payment of education or vocational programs or postsecondary education degree programs as provided in RCW 72.09.460 and 72.09.465.

(b) The deductions required under subsection (2) of this section shall not apply to funds received by the department from a third party, including but not limited to a nonprofit entity on behalf of the department's education, vocation, or postsecondary education degree programs.

(7) The deductions required under subsection (2) of this section shall not apply to any money received by the department, on behalf of an inmate, from family or other outside sources for the payment of postage expenses. Money received under this subsection may only be used for the payment of postage expenses and may not be transferred to any other account or purpose. Money that remains unused in the inmate's postage fund at the time of release shall be subject to the deductions outlined in subsection (2) of this section.

(8) When an inmate sentenced to life imprisonment without possibility of release or sentenced to death under chapter 10.95 RCW receives funds, deductions are required under subsection (2) of this section, with the exception of a personal inmate savings account under subsection (2)(b) of this section.

(9) The secretary of the department of corrections, or his or her designee, may exempt an inmate from a personal inmate savings account under subsection (2)(b) of this section if the inmate's earliest release date is beyond the inmate's life expectancy.

(10) The interest earned on an inmate savings account created as a result of the *plan in section 4, chapter 325, Laws of 1999 shall be exempt from the mandatory deductions under this section and RCW 72.09.111.

(11) Nothing in this section shall limit the authority of the department of social and health services division of child support, the county clerk, or a restitution recipient from taking collection action against an inmate's moneys, assets, or property pursuant to chapter 9.94A, 26.23, 74.20, or 74.20A RCW including, but not limited to, the collection of moneys received by the inmate from settlements or awards resulting from legal action.

[2009 c 479 § 61. Prior: 2007 c 483 § 404; 2007 c 365 § 1; 2007 c 91 § 1; 2003 c 271 § 3; 1999 c 325 § 1; 1998 c 261 § 2; 1997 c 165 § 1; 1995 1st sp.s. c 19 § 8.]

Notes:

***Reviser's note:** 1999 c 325 § 4 requires the secretary of corrections to prepare and submit a plan to the governor and legislature by December 1, 1999.

Effective date -- 2009 c 479: See note following RCW 2.56.030.

Findings -- Intent -- 2007 c 483: See note following RCW 72.09.460.

Findings -- Part headings not law -- Severability -- 2007 c 483: See RCW 72.78.005, 72.78.900, and 72.78.901.

Findings -- Purpose -- Short title -- Severability -- Effective date -- 1995 1st sp.s. c 19:
See notes following RCW 72.09.450.

APPENDIX D

RCW 72.11.020

Inmate funds — Legal financial obligations — Disbursal by secretary.

The secretary shall be custodian of all funds of a convicted person that are in his or her possession upon admission to a state institution, or that are sent or brought to the person, or earned by the person while in custody, or that are forwarded to the superintendent on behalf of a convicted person. All such funds shall be deposited in the personal account of the convicted person within the institutional resident deposit account as established by the office of financial management pursuant to RCW 43.88.195, and the secretary shall have authority to disburse money from such person's personal account for the purposes of satisfying a court-ordered legal financial obligation to the court. Legal financial obligation deductions shall be made as stated in RCW 72.09.111(1) and 72.65.050 without exception. Unless specifically granted authority herein, at no time shall the withdrawal of funds for the payment of a legal financial obligation result in reducing the inmate's account to an amount less than the defined level of indigency to be determined by the department.

Further, unless specifically altered herein, court-ordered legal financial obligations shall be paid.

[2002 c 126 § 1; 1989 c 252 § 23.]

Notes:

Purpose -- Prospective application -- Effective dates -- Severability -- 1989 c 252: See notes following RCW 9.94A.030.